

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

WILLIAM JOSPEH SCHIMANSKEY,

Petitioner,

vs.

MAGGIE MILLER-STOUT,

Respondent.

NO: CV-12-5154-EFS

**ORDER DISMISSING HABEAS ACTION AS  
UNTIMELY**

Before the Court is Plaintiff William Joseph Schimanskey's First Amended Petition Under 28 U.S.C. § 3354 for Writ of Habeas Corpus ("Petition") filed February 11, 2013. ECF No. 7. Petitioner, a prisoner at the Airway Heights Corrections Center, is proceeding *pro se* and has paid the full filing fee for this habeas action. He amended his Petition to properly name the Superintendent of the facility where he is incarcerated as Respondent. Nevertheless, he has failed to show that this habeas action is timely under 28 U.S.C. § 2244(d).

Petitioner challenges his 2006 Franklin County jury conviction for First Degree Robbery, for which he was sentenced to 175 months incarceration, including a 24-month deadly weapon enhancement. Petitioner indicates his judgment was affirmed on appeal and the

1 Washington Supreme Court denied review on July 9, 2008. He did not  
2 seek *certiorari* in the U.S. Supreme Court.

3 As his sole ground for federal habeas relief, Petitioner asserts  
4 insufficiency of evidence. In support of this ground, he states, "the  
5 evidence was insufficient for any rational trier of fact to find the  
6 essential elements of the crime of first-degree robbery as a principal  
7 or an accomplice." ECF No. 7 at 5. Petitioner, however, presents no  
8 **facts** to support his claim as required by Rule 2(c)(2), Rules  
9 Governing Section 2254 Cases in the United States District Courts.  
10 Therefore, the Court has no basis on which to grant federal habeas  
11 relief.

12 Furthermore, Mr. Shimanskey presented no statutory or equitable  
13 basis to toll the running of the federal limitations period set forth  
14 in 28 U.S.C. § 2244(d). His contention that 28 U.S.C. § 2244(d) does  
15 not apply to claims of insufficiency of the evidence is factually and  
16 legally incorrect. Petitioner cites no authority for this contention,  
17 and the Court is not aware of any such authority. In the absence of  
18 precedential authority to the contrary, the limitations period of 28  
19 U.S.C. § 2244(d)(1) applies to any claim raised in a petition filed  
20 under 28 U.S.C. § 2254. Because the federal limitations period  
expired in October 2009, the present federal habeas action, filed in  
November 2012, is time-barred.

Petitioner failed to demonstrate that he diligently pursued his  
rights and that extraordinary circumstances prevented him from timely  
filing his federal habeas petition. See *Holland v. Florida*, 130 S.Ct.  
2549, 2562 (2010). For the reasons set forth above and in the Court's  
ORDER DISMISSING HABEAS ACTION AS UNTIMELY -- 2

1 previous Order, ECF No. 6, **IT IS ORDERED** this action is **DISMISSED with**  
2 **prejudice** as untimely under 28 U.S.C. § 2244(d).

3 **IT IS SO ORDERED.** The Clerk's Office shall file this Order,  
4 enter judgment, and close the file. The Court further certifies that  
5 pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could  
6 not be taken in good faith, and there is no basis upon which to issue  
7 a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P.  
8 22(b).

9 **DATED** this 22<sup>nd</sup> day of March 2013.

10 s/ Edward F. Shea  
11 EDWARD F. SHEA  
12 Senior United States District Judge  
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